

PROGRAM POLICY MEMORANDUM-PROTECTION AND SAFETY # 1-99

March 11, 1999

To: Protection and Safety Workers
Protection and Safety Supervisors
Income Maintenance-Foster Care Workers
Legal Services Team

From: Chris Hanus, Administrator

RE: Further Clarification of LB 1041 and Adoption and Safe Families Act

On October 13, 1998, Program Policy Memorandum-Protection and Safety #2-98 was issued to clarify issues in implementing LB 1041 and the Adoption and Safe Families Act. That memo remains in effect; it is recommended that you review it again, in conjunction with this memo, which is issued to address additional questions which have arisen.

1. When are permanency hearings required, for whom, and for what purpose?

ANSWER: Statute addresses several types of permanency hearings, which are described below.

- a) When the court determines that reasonable efforts to preserve and reunify the family are not required, a permanency hearing shall be held within 30 days after that determination.
 - Purpose and required finding: Appropriateness of the permanency plan.
 - Case plan should include when the child will be referred for termination of parental rights, placed for adoption with a fit and willing relative, or placed with a guardian.
 - Court report should include reasonable efforts being made to place the child in a timely manner in accordance with the permanency plan and steps being taken to finalize the permanency placement of the child.

- b) When the child is in out-of-home care, a permanency hearing is required no later than 12 months after the child entered foster care AND ANNUALLY THEREAFTER during the continuation of foster care.
 - Purpose and required finding: Appropriateness of the permanency plan and whether, if applicable, and when, the child will be:

- Returned to parent;
- Referred for filing of a petition for termination of parental rights;
- Placed for adoption; or,
- Referred for guardianship.
- Case plan and court report should include the above information.

c) When the child has been in out-of-home care for 15 of the last 22 months, under the responsibility of HHS, within 30 days the court must hold a hearing.

- Purpose and required finding: Whether there is an exception to the requirement of a filing of petition for termination of parental rights. NOTE: If rights of BOTH parents are extinguished by death, termination of parental rights, or voluntary relinquishment, or if a petition for termination of parental rights already is filed, this hearing is not required.
- Court report should include information to show progress toward the permanency goal recommended by HHS. If the recommendation is not to file a termination of parental rights petition, the reason(s) for this recommendation must be clearly explained.
- Case plan should include the permanency plan for the child.

2. Is placement of a child with a non-custodial parent considered an out-of-home placement?

ANSWER: No. Such a placement is a placement with PARENT.

3. Is a youth's time in detention or a locked facility counted as an out-of-home care?

ANSWER: Yes. The key to whether this time is counted toward the 15 of 22 month requirement for a filing for termination of parental rights is whether the youth was in the placement "under the responsibility of the state."

4. Is a youth's time in a hospital or residential setting counted as out-of-home care?

ANSWER: Yes. Again, the key will be whether the youth was in the setting "under the responsibility of the state."

5. When a child enters HHS custody from a setting other than a parent's or guardian's home, is the time the child spent in that out-of-home setting counted in determining when a 15/22 hearing is required?

ANSWER: No. Statute says that this requirement exists when the child has been in out-of-home care UNDER THE RESPONSIBILITY OF THE STATE for 15 or more of the most recent 22 months.

Point of clarification: ANY setting other than parent (including adoptive parent) or guardian is considered to be out-of-home care for purposes of determining if and when a 15/22 hearing is required.

6. Is the requirement for out-of-home care "under the responsibility of the state" a part of the -grounds for termination of parental rights?

ANSWER: No. Statute allows for a filing of termination of parental rights on the grounds that a child has been in out-of-home care for 15 or more of the past 22 months. Statute does NOT require that this out-of-home care was "under the responsibility of the state."

7. How should we proceed with termination filings in cases where the only adjudication is 1, 2, 3b, or 4?

ANSWER: Statute does not automatically exclude such youth from the requirement of a filing for TPR. However, it is questionable whether a termination can be obtained if there has been no prior finding of fault on the part of the parent.

The worker must use the test of whether termination would be in the best interests of the child. If so, the worker is urged to discuss with the county attorney the possibility of filing a 3(a) petition.

8. Has there been a change in the definition of "Reasonable efforts?" Judges and attorneys seem to asking questions not addressed to workers prior to LB 1041.

ANSWER: LB 1041 and ASFA have not changed the definition of or requirement re: reasonable efforts to prevent removal or reunify a child with the parent. The only change is that when the court finds that reasonable efforts to reunify are not in the child's best interests, reasonable efforts to place the child in adoption, guardianship, or another permanency placement must be documented by HHS.

Some courts and parents' attorneys seem to be holding HHS staff more accountable than in the past in regard to reasonable efforts made to prevent removal of the child. This action on their part is exactly what was contemplated in the enactment of ASFA and LB 104 1. When providing information to the court for the original reasonable efforts determination, usually at the original detention hearing, the worker should make sure that all efforts to date are documented. For example, the worker might consider reporting that one effort being made is the safety assessment. When the worker has identified services needed, even at this early stage in the case, the worker can state what these services are, with the caveat that as the assessment progresses, there might be additional or different service needs.

If you have questions about the contents of this memo, please contact the appropriate member of the Legal Services Team, or Margaret Bitz (402-471-9457).